

In re ) Fair Hearing No. 10,750  
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Appeal of )

The petitioner appeals certain actions of the Department of Social and Rehabilitation Services with regard to her grandson who is in their custody. The Department moves to dismiss the appeal for lack of jurisdiction.

1. The petitioner is the grandmother of a child who has been adjudicated by the Vermont Family Court as a child in need of care or supervision. Custody and guardianship of the child was removed from the child's mother and placed with the Department of Social and Rehabilitation Services by the Vermont Family Court in March of 1991 and was continuing at the time of the hearing.

2. It does not appear from any of the testimony or the court documents put into evidence that the petitioner has ever been a custodian of the child or a party to the juvenile court proceedings.

3. The petitioner has filed this appeal as an "interested person" and relative to protest the unfair treatment of herself, her daughter and her grandson by S.R.S. Her primary complaint involves visitation with her grandson,

although she also has a complaint involving the Department's role in approving her daughter's living situation as a condition for return of the child.

ORDER

The Department's motion to dismiss is granted.

REASONS

The statute governing appeals to the Human Services Board provides as follows:

An applicant for or a recipient of assistance, benefits or social services from the department of social and rehabilitation services, the department of social welfare, the office of economic opportunity, the office on aging, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because he is aggrieved by any other agency action affecting his receipt of assistance, benefits or services, or his license or license application; or because he is aggrieved by agency policy as it affects his situation.

3 V.S.A. § 3091(a)

The above statute creates the right to appeal and specifically enumerates the classes of persons and types of claims which may be brought before the Board. If an appellant does not fall into the class of persons above and does not have a claim as enumerated above, the Board cannot hear her case. Fair Hearing No. 9455.

There is nothing in the facts which indicate that the petitioner meets the above definition regarding the class of

persons and kind of appeals which may come before the Board because she is neither an applicant for or recipient of assistance, benefits or social services who is appealing a denial or delay of services or benefits from the Department, nor an applicant for a license or a licensee grieving action taken with regard to a license. The petitioner is the mother of a person who arguably fits that description but she herself does not have the connection with the agency contemplated by the statute conferring the right to appeal.

Being an "interested person" or relative of someone involved with S.R.S. is not a sufficient connection in and of itself to seek relieve from the Board.

Even if the petitioner's status and complaint did fall within the above statute of general jurisdiction, it is very doubtful that the Board could take jurisdiction over this matter because the subject matter of the appeal is probably one within the exclusive jurisdiction of the Family Court.

The juvenile protection statute provides that:

(a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of this chapter, except as otherwise provided in this chapter.

(b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any other court of this state, except an order establishing child support, to the extent inconsistent therewith.

33 V.S.A. § 5503

The gravamen of the petitioner's complaint is the right

of herself and her daughter to visit with her grandson. That subject is one which is clearly part of and, indeed, likely central to the CHINS proceedings in juvenile court. As neither this matter nor the daughter's approved living arrangement are administrative matters tangential to the court proceedings (such as payment for a service), it must be found that the subjects raised by the petitioner are ones which are solely within the jurisdiction of the Family Court. See In re Susan Kirkpatrick, 147 Vt. 637 (1987). The petitioner's remedy, if there be any, is in the Family Court handling the CHINS petition.

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